



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2012-0508]

RIN 1625-AA00

Safety Zone; Arctic Drilling and Support Vessels, Puget Sound, Washington

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone around the nineteen vessels associated with Arctic drilling as well as their lead towing vessels while those vessels are underway in the Puget Sound Captain of the Port Zone. The safety zone is necessary to ensure the safety of the maritime public and specified vessels while they transit and will do so by prohibiting any person or vessel from entering or remaining in the safety zone unless authorized by the Captain of the Port or a Designated Representative.

DATES: This rule is effective with actual notice from June 7, 2012, until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. This rule is effective in the Code of Federal Regulations from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through August 1, 2012.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2012-0508. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Ensign Anthony P. LaBoy, Waterways Management Division, Coast Guard Sector Puget Sound; Coast Guard; telephone 206-217-6323, email SectorPugetSoundWWM@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5

U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it would be impracticable. Due to the hazardous conditions discussed below, it is necessary to make this regulation effective immediately in order to ensure the safety of the maritime public while the named vessels are transiting.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. It is impracticable to have a delayed effective date because some of the specified vessels are currently in Puget Sound. Immediate action is necessary to protect the public from the threat to navigational safety posed by such tactics or activities as described above.

B. Basis and Purpose

In June 2011, Greenpeace protestors illegally boarded Cairn Energy's drilling platform off Greenland. Greenpeace has identified that both Shell and British Petroleum are possible future targets in 2012 and 2013. On February 16, 2012, the environmental advocacy organization Alaska Wilderness League made local inquiries and chartered a vessel to observe the mobile

offshore drilling unit (MODU) KULLUK, which is currently undergoing retro-fit at Vigor shipyard in Seattle. On February 26, 2012, actress Lucy Lawless and six Greenpeace activists illegally boarded the drilling vessel NOBLE DISCOVERER in New Zealand. On March 16 2012, Greenpeace activists boarded the Finnish icebreaker FENNICA, a Shell-contracted vessel, and hung banners from the vessel's cranes. On May 1-4, 2012, Greenpeace activists conducted multi-faceted direct action operations aimed at delaying the transit of the Finnish icebreaker NORDICA, a Shell-contracted vessel. Activists boarded the vessel while moored, blocked the vessel with kayaks and swimmers as it got underway, and boarded the vessel while underway at sea via small boats. Further on 31 May 2012, the Greenpeace motor vessel ESPERANZA entered Elliott Bay. While the Coast Guard respects the First Amendment rights of protesters, it is clear that certain unlawful protest activity poses a danger to the life and safety of protesters, target vessels, and other legitimate waterway users. The Coast Guard must take swift action to prevent such harm.

The following vessels associated with exploratory drilling in the Arctic may be transiting into, out of, or around the Sector Puget Sound Captain of the Port (COTP) Zone from now until August 1st 2012: NOBLE DISCOVERER, KULLUK, NORDICA, FENNICA, TOISA DAUNTLESS, TOR VIKING II, HARVEY EXPLORER, HARVEY SPIRIT, HARVY SISUAQ, AIVIQ, NANUQ, GUARDSMAN, KALMATH, ARCTIC

CHALLENGER, Z BIG 1, LAUREN FOSS, CORBIN FOSS, ARCTIC ENDEAVOR, POINT OLIK TOK and any towing vessel actively engaged in the towing or escorting of these vessels. Based on a recent history of unsafe demonstration tactics and vessel boardings of some of these vessels in New Zealand and Finland within the past six months, the Coast Guard finds it necessary to establish this temporary safety zone in order to allow for safe and lawful on-water protests without endangering the lives or safety of any person or vessel, and to keep the waterways unrestricted to all legitimate users.

Persons or vessels positioned in the path of the specified vessels, all of which are extremely large, and many of which transit with tow or tug assistance, would present an extremely hazardous situation. Named vessels could be forced to deviate from their routes into more shallow water, out of an established traffic scheme or International Maritime Organization established Traffic Separation Scheme, or into otherwise unsafe conditions. This could create a hazardous situation where the aforementioned vessels would be at risk of collision or grounding or break down the good order and predictability of vessel traffic flow in the Vessel Traffic Service area of operations. Additionally, persons in the water and small vessels coming within 500 yards of one of the oncoming named vessels may be injured or killed in a collision, especially since the larger of the named vessels, including those vessels in tow, may be unable to see such persons

or small vessels, and would not be able to stop, reduce speed, or turn quickly enough to avoid a collision. In addition, blocking of the waterway or portions of the waterway, and maneuvering close to large vessels underway could expose other legitimate waterway users to similar risks of grounding or collision, and expose persons or vessels engaged in such tactics to collisions with other waterway users. This risk is exacerbated by areas of congestion within the Puget Sound COTP Zone. Tacoma and Seattle together comprise the 3rd largest container ship port in the United States. In addition, the Puget Sound COTP Zone has the largest ferry system in the United States. As such, persons and small vessels in Puget Sound must contend with numerous large container ships and ferries transiting Puget Sound, in addition to other waterway users such as recreational vessels, construction vessels, public vessels, and others.

C. Discussion of the Final Rule

In order to improve safety in light of the considerations above, the Coast Guard is establishing a temporary safety zone to restrict vessel movement around the vessels specified in the BACKGROUND section of this notice. The safety zone established by this rule will prohibit any person or vessel from entering or remaining within 500 yards of the following specified vessels, unless authorized by the COTP or his Designated Representative, while in the Sector Puget Sound COTP Zone: NOBLE DISCOVERER, KULLUK, NORDICA, FENNICA, TOISA DAUNTLESS, TOR VIKING II, HARVEY

EXPLORER, HARVEY SPIRIT, HARVY SISUAQ, AIVIQ, NANUQ, GUARDSMAN, KALMATH, ARCTIC CHALLENGER, TUUQ, LAUREN FOSS, CORBIN FOSS, ARCTIC ENDEAVOR, and POINT OLIK TOK. This safety zone includes any associated towing and assist vessels, and associated towing equipment, including the towline. The COTP has granted general permission for vessels to enter the outer 400 yards of the safety zone, aft of the pilot house of these vessels, or the lead towing vessel for those vessels in tow, as long as those vessels within the outer 400 yards of the safety zone operate at the minimum speed necessary to maintain course unless required to maintain speed by the navigation rules.

It is noted that in March of 2012, the U.S. District Court for the District of Alaska issued a preliminary injunction order in a civil case between Shell Oil, Inc., and Greenpeace. This civil injunction generally requires Greenpeace to remain 500-1000 yards away from the named vessels. The Coast Guard is not required to enforce this injunction, and will not do so. This regulation is separate and distinct from the civil injunction, and is applicable to all vessels, whether or not they are acting on behalf of Greenpeace, and whether or not the persons aboard are engaged in any sort of protests or demonstration. The purpose of the present regulation is to protect the safety of all legitimate waterway users.

D. Regulatory Analyses

We developed this rule after considering numerous statutes

and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. The Coast Guard bases this finding on the fact that the safety zone will be in place for a limited period of time and vessel traffic will be able to transit around the safety zone. Maritime traffic may also request permission to transit through the zones from the COTP, Puget Sound, or Designated Representative.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities; the owners and operators of vessels intending to operate in the

waters covered by the safety zone while it is in effect. The rule will not have a significant economic impact on a substantial number of small entities because the safety zone will be in place for a limited period of time and maritime traffic will still be able to transit around the safety zone. Maritime traffic may also request permission to transit through the zone from the COTP, Puget Sound, or Designated Representative.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or

complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State,

local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the

Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves an emergency safety zone for all waters encompassed within 500 yards of the Arctic drilling and support vessels. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or

information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165, as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

2. Add § 165.T13-221 to read as follows:

§ 165.T13-221 Safety Zone; Arctic Drilling and Support Vessels, Puget Sound, Washington.

(a) Location. The following area is a safety zone: All waters encompassed within 500 yards of the following vessels: NOBLE DISCOVERER, KULLUK, NORDICA, FENNICA, TOISA DAUNTLESS, TOR VIKING II, HARVEY EXPLORER, HARVEY SPIRIT, HARVY SISUAQ, AIVIQ, NANUQ, GUARDSMAN, KALMATH, ARCTIC CHALLENGER, TUUQ, LAUREN FOSS, CORBIN FOSS, ARCTIC ENDEAVOR, and POINT OLIKTOK, to include the lead towing vessels and assist tugs, and associated towing gear, including the towline, while these vessels are transiting in the Sector Puget Sound Captain Of The Port (COTP) Zone as defined in 33 CFR 3.65-10.

(b) Regulations. In accordance with the general regulations in 33 CFR Part 165, Subpart C, no person may enter or remain in the safety zone created in this rule unless authorized by the COTP or his Designated Representative. A "designated representative" is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the COTP to act on his or her behalf. The COTP has granted general permission for persons or vessels to enter the outer 400 yards of the safety zone, aft of the pilot house of the vessel or lead towing vessels, as applicable, as long as those vessels within the outer 400 yards of the safety zone operate at the minimum speed necessary to maintain course unless required to maintain speed by the navigation rules. The COTP may be assisted by other federal, state, or local agencies with the enforcement of the safety zone.

(c) Authorization. All vessel operators who desire to enter the inner 100 yards of the safety zone or transit the outer 400 yards at greater than minimum speed necessary to maintain course unless required to maintain speed by the navigation rules must obtain permission from the COTP or a Designated Representative by contacting the on-scene Coast Guard patrol craft on VHF 13 or Ch 16. Requests must include the reason why movement within this area is necessary. Vessel operators granted permission to enter the safety zone will be escorted by the on-scene Coast Guard patrol craft until they are outside of the safety zone.

(d) Enforcement Period. This rule will be enforced through August 1, 2012, unless canceled sooner by the Captain of the Port.

DATED: June 7, 2012

S. J. Ferguson
Captain, U.S. Coast Guard
Captain of the Port, Puget Sound

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